IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1296 of 1997
in
SPECIAL CIVIL APPLICATION No 5722 of 1984
with
CIVIL APPLICATION No 10108 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

THAKKAR HARIRAM JETHMAL

Versus

STATE OF GUJARAT

Appearance:

MR AR THACKER for Appellants No. 1-2
MR PREMAL JOSHI, AGP for Respondents No. 1,5-6
MR SURESH M SHAH for Respondent No. 2
MR MEHUL S SHAH for Respondent No. 2
MR BIPIN I MEHTA for Respondent No. 3
RULE SERVED for Respondent No. 4

CORAM : MR.JUSTICE B.C.PATEL

and

MR.JUSTICE JAYANT PATEL

Date of decision: 17/01/2002

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE B.C.PATEL)

#. Appellants - original petitioners of Special Civil Application No. 5722 of 1984 have filed this appeal being aggrieved by the order made by the learned Single Judge on 24.7.96 whereby the aforesaid Special Civil Application came to be rejected. The petitioners filed this petition contending that they purchased the land in question being Inami land situated at Moti Mau, Taluka Mandvi, District - Kutchchh (bearing Survey No. 90 admeasuring Acre 6 - 7 Gunthas). It was the say of the petitioners that they purchased the land by executing registered sale deed in their favour on 25.5.70 which was executed by Suleman Samat Sama - respondent no. 4 who was Butadar. It appears that an order was made by the Special Mamlatdar, Bhuj on 20th July, 1983 under Section 8 of the Bombay Inams (Kutchchh Area) Abolition Act, 1958 (hereinafter to be referred to as "the Act"), whereby the Special Mamlatdar held that the amount of Pat be transmitted to Inamdar Lohana Mahajan, Moti Mau, and the rights of Suleman Samat Sama were recognized over the land in question.

#. It is required to be noted that under the Act, conferment of occupancy rights in respect of the land in Inam village or of Inam land to which Section 6 does not apply, is to be determined in accordance with the procedure under the Act and after following the procedure, decision is required to be rendered. Section 7 with sub-clauses (a),(b),(c) and (d) are required to be quoted here. The same are as under.

7. Conferment of occupancy rights in respect of land in Inam village or of Inam land to which section 6 does not apply -- (1) In the case of any land comprised in an inam to which the provisions of section 6 do not apply--

(a) If such land is in the possession of the inamdar as Gharkhed land, the inamdar,

(b) If such land is held by a person as sub-inam, such person

(c) If such land is in the possession of the butadar, ret butadar or any other person holding

it as a tenant, such butadar, ret butadar or other person, and

(d) If such land is in the possession of a person holding through or from the inamdar and to whom clauses (b) and (c) do not apply, the inamdar

shall be primarily liable to the State Government for the payment of land revenue in respect of the land and he shall, subject to the provisions of sub-sections (2),(3),(4) and (5), be entitled to all the rights and shall be liable to all the obligations in respect thereof as an occupant under the Code and the rules made thereunder."

It is required to be noted that in the year 1945, the land in question was mortgaged. Again thereafter in 1954, the land was mortgaged. At the time, when the Act came into force, Suleman Samat Sama was in possession of the land. It is also required to be noted that as contended by the appellant, Buta rights of the land in question were transferred in the year 1970 in favour of the petitioners Thakkar Hariram Jethmal and Thakkar Sunderji Jethmal - the appellants herein.

#. By order dated 28.7.83, Special Mamlatdar made a cryptic order. Reading the said order, it appears that old tenure possessory rights were transferred in favour of Suleman Samat Sama of Moti Mau and the amount of Pat was to be paid to Inamdar.

#. Against this order, respondent no. 2 herein preferred appeal before the Gujarat Revenue Tribunal, Ahmedabad and the Gujarat Revenue Tribunal by its order dated 2.5.84 held that the Special Mamlatdar has surprisingly ordered to issue occupancy certificate in favour of respondent no. 3 though he had not deposited the amount as per the provisions of the Act. The Tribunal directed that respondent no. 3 be evicted from the disputed land as he is unauthorisedly occupying the land. Against the said order, Special Civil Application was preferred by the petitioners and the learned Single Judge, hearing the Special Civil Application held that the petitioners purchased the land in question after the Act came into force. Both the petitioners-appellants are purchasers or tenants of the land in question and they have no right whatsoever in the land. That they have purchased the land after coming into force of the aforesaid Act. The learned Single Judge held that there was no question of passing the order of issuing occupancy

certificate in favour of Usman Suleman who has admittedly not deposited the amount as per the provisions of the Act. The learned Single Judge also opined that Sundarji Jethmal has rightly been held as person in possession of the land in question.

#. It is required to be noted that respondent no. 3 who was the appellant before the Tribunal prayed before the Tribunal to quash and set aside the order made by the Mamlatdar and to give direction to the Competent Officer to decide as to who is tenant and till such decision is rendered, inquiry under Section 8 of the Act be stayed. Tenor of the memo of the appeal is that opportunity was not given in the inquiry proceedings and insistence was to see that the inquiry is held in accordance with law. Before us also an order dated 22.9.97 made by the Mamlatdar, exercising powers under the Act is produced. It appears that the attention of the Mamlatdar was drawn to the amendment made to the Act. However, in view of the fact the petition was pending in the High Court, he was not able to decide the matter and therefore, requested the Collector to make a Reference under Section 15(4) & (5) of the Act.

#. We have heard the matter at length. We are of the opinion that it was required to be decided by the Competent Authority as to whether the person claiming rights was Butadar or not or was in any category referred in Section 7 of the Act. Without deciding this question, it was not proper on the part of the authority concerned to render the decision. We are not expressing any opinion in the matter one way or the other as the same may prejudice the case of either of parties. We are of the opinion that the Tribunal, instead of deciding the real issue, by sidetracking the same made the order of eviction. The learned advocates for the parties also requested us not to express any opinion and therefore, we are not expressing any opinion about this aspect of the order also. Suffice it to say that it would be open for the Competent Authority to pass an order in accordance with law after giving opportunity of hearing to the parties concerned.

#. In the result, the order made by the learned Single Judge is quashed and set aside. The orders made by the Tribunal as well as the Mamlatdar are quashed and set aside. The Competent Authority is directed to decide the disputes within a period of three months from the receipt of the writ of this Court. It would be open to the parties to move the Competent Authority so as to enable it to decide the matter at the earliest. The Registry is

directed to forward copy of this order to the Collector, Kutchchh so that the Collector can dispose of the matter at the earliest. In view of the above judgment, the Civil Application for stay stands disposed of.

[B.C. PATEL, J.] [JAYANT PATEL, J.]

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